

DONELAN, CLEARY, WOOD & MASER, P. C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 850

1275 K STREET, N. W.

WASHINGTON, D. C. 20005-4078

TELEPHONE: (202) 371-9500

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September 30, 1993

3-273A0367  
18424  
SEP 30 1993 5 38 PM  
INTERSTATE COMMERCE COMMISSION

The Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Secretary Strickland:

Enclosed for recordation, under the provisions of 49 U.S.C. § 11303(a) and the regulations thereunder, are three executed counterparts of Security Agreement between The First National Bank of Maryland ("Debtor") and Aid Association for Lutherans, a Wisconsin fraternal benefit organization ("Secured Party"), a primary document, dated September 30, 1993.

The names and addresses of the parties to the enclosed documents are as follows:

SECURED PARTY: Aid Association for Lutherans  
4321 North Ballard Road  
Appleton, Wisconsin 54919-0001

DEBTOR: The First National Bank of Maryland  
25 South Charles Street  
Baltimore, Maryland 21201

A general description of the railroad equipment covered by the enclosed documents is as follows:

One hundred thirty seven (137) newly manufactured by Trinity Industries, Inc. 4,000 cu. ft., 118-ton capacity, 286,000 lb. gross rail load, roller bearing, five pocket, rapid discharge, rotary coupled aluminum open top coal hopper cars bearing GRTX reporting marks and identified by road nos. 13001 through 13130, inclusive, and WCSX reporting marks and identified by road nos. 12124 through 12130, inclusive.

The undersigned is the attorney-in-fact of The First National Bank of Maryland, Wheelabrator Coal Services Company and Aid Association for Lutherans mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Please return the extra copies of the enclosed documents to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005, or to the bearer hereof.

Also enclosed is a remittance in the amount of \$16.00 for the required recording fees.

*Donelan, Cleary, Wood & Maser*

DONELAN, CLEARY, WOOD & MASER, P. C.

Letter to Honorable Sidney L. Strickland, Jr.

September 30, 1993

Page 2

A short summary of the documents to appear in the index follows:

Security Agreement, dated September 30, 1993 ("Security Agreement") between The First National Bank of Maryland ("Debtor") and Aid Association for Lutherans ("Secured Party"), relating to one hundred thirty seven (137) newly manufactured 4,000 cu. ft., 118-ton capacity, 286,000 lb. gross rail load, roller bearing, five pocket, rapid discharge, rotary coupled aluminum open top coal hopper cars bearing GRTX reporting marks and identified by road nos. 13001 through 13130, inclusive, and WCSX reporting marks and identified by road nos. 12124 through 12130, inclusive.

Very truly yours,

THE FIRST NATIONAL BANK OF MARYLAND  
AID ASSOCIATION FOR LUTHERANS

By:



---

John K. Maser III  
Attorney-In-Fact

**Interstate Commerce Commission**  
Washington, D.C. 20423

9/30/93

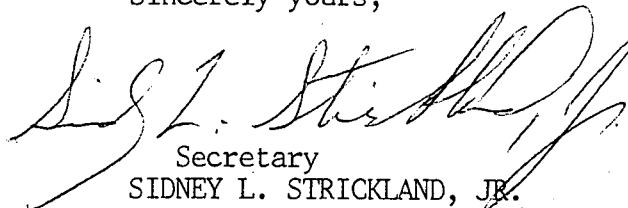
OFFICE OF THE SECRETARY

John K Maser III  
Donelan, Cleary Wood & Maser  
1275 K St N.W. Suite 850  
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on **9/30/93** at **3:25pm**, and assigned  
recordation number(s). **18423 & 18423-A 18424**

Sincerely yours,

  
Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

2 Bk

SECURITY AGREEMENT

18424  
SEP 30 1993-3 35 PM  
INTERSTATE COMMERCE COMMISSION

AGREEMENT, dated September 30, 1993, between THE FIRST NATIONAL BANK OF MARYLAND, a national banking association ("Debtor"), having its principal place of business and mailing address at 25 S. Charles Street, 15th Floor, Baltimore, Maryland 21201 and AID ASSOCIATION FOR LUTHERANS, its successors and assigns (the "Secured Party") having its principal place of business at 4321 North Ballard Road, Appleton, Wisconsin 54919.

WHEREAS, Debtor has agreed to deliver this Security Agreement to Secured Party pursuant to that certain Secured Note Purchase Agreement between Debtor and Secured Party, dated as of September 30, 1993 (the "Note Purchase Agreement"), and the Secured Non-Recourse Note(s) issued pursuant thereto (the "Notes") as a condition precedent to Secured Party's extending credit to Debtor pursuant to that Note Purchase Agreement;

NOW, THEREFORE, to induce the Secured Party to extend credit to Debtor, Debtor agrees as follows:

Article I  
Creation of Security Interest

1. Debtor hereby grants to Secured Party a security interest in the railroad cars described in Exhibit A hereto attached and any and all substitutions, replacements, modifications, additions and accessions thereto or therefor to which Debtor acquires title and the proceeds thereof, including without limitation, insurance proceeds (the "Cars").

2. In addition, Debtor hereby grants to Secured Party an assignment of and security interest in all of Debtor's rights in and to the Railcar Lease Agreement (including all Riders and Schedules thereto, the "Lease") dated September 30, 1993 between the Debtor, as Lessor, and WHEELABRATOR COAL SERVICES COMPANY, as Lessee (the "Lessee"), a Memorandum of which is attached hereto as Exhibit B, any and all subleases of the Cars, and the Railcar Lease Guaranty (the "Guaranty") dated September 30, 1993 executed by Southwestern Public Service Company (the "Guarantor"), as Guarantor, a copy of which is attached hereto as Exhibit C, including without limitation any and all rents, reserved rents, proceeds of sale from sale of the Cars, amounts payable by the Lessee in lieu of rent during periods of rental abatement, and any and all other amounts due under the Lease and/or the Guaranty, but excluding in all cases the Excluded Rights and Excluded Payments, as hereinafter defined (hereinafter together with the Cars called the "Collateral"). All sums received shall be held by Secured Party under that certain Assignment of Lease and Rents and of Guaranty made as of September 30, 1993 executed

by the Debtor in favor of the Secured Party (the "Assignment"), and so long as no Event of Default (as defined in the Note Purchase Agreement) has occurred and is continuing, or, which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, all such rents and other sums shall be paid and applied as provided in the Notes and the Note Purchase Agreement.

3. The Collateral is given to secure all of the Debtor's obligations under the Notes and the Note Purchase Agreement, all of Debtor's obligations and liabilities arising out of Debtor's covenants, warranties and representations contained herein or in any of the other Loan Documents (as defined herein) (the "Obligations").

4. Notwithstanding the foregoing, so long as no Default (as defined in the Lease) shall have occurred and be continuing, the interests of Secured Party in the Cars shall be subject and subordinate to the Lessee's interest in the Cars under the Lease, and the Secured Party shall not disturb the Lessee's quiet use and possession of the Cars.

5. For the purposes of this Security Agreement, the Note(s), the Note Purchase Agreement, the Assignment and all of the other documents, agreements and instruments entered into in connection herewith and therewith (collectively, together with any amendment or modifications thereto, the "Loan Documents") the term "Excluded Rights and Excluded Payments" shall mean any and all of the following:

(a) all payments of any indemnity under the Lease or any of the other documents, instruments or agreements entered into in connection therewith (collectively, the "Operative Agreements"), and all interest in respect thereof, which by the terms thereof are payable to the Debtor (but not those payable to the Secured Party as an additional Indemnatee);

(b) any insurance proceeds payable under public liability policies maintained by the Lessee pursuant to the Lease which by the terms of such policies or by the terms of the Lease are payable directly to the Debtor (but not those payable to the Secured Party as an additional Indemnatee), and any proceeds of insurance maintained with respect to the Cars by the Debtor in excess of the Stipulated Loss Value of such Cars;

(c) all rights of the Debtor under any Operative Agreement to demand, collect, sue for or otherwise obtain all amounts from the Lessee due the Debtor all on account of any such indemnities or payments referred to in paragraph (a) above and to seek legal or equitable remedies to require the Lessee to

maintain the insurance coverage referred to in paragraph (b) above, provided that the rights referred to in this paragraph (c) shall not be deemed to include the exercise of any remedies provided for in Section 18(c) of the Lease other than the right to proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of such indemnities or insurance covenants or to recover damages for the breach thereof;

(d) if any Default based solely on a breach of any covenant of the Lessee to pay any indemnity referred to in paragraph (a) above or to maintain any insurance referred to in paragraph (b) above shall occur and be continuing, the right of the Debtor to exercise the remedies, but only those remedies provided for in Section 18(c) of the Lease, to enforce, by appropriate court action, either at law or in equity, performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Debtor or to maintain such insurance or recover damages for the breach of any such covenant;

(e) the right of the Debtor, but not to the exclusion of the Secured Party, as provided in any Operative Agreement (i) to receive from the Lessee notices, certificates and other documents and information which the Lessee is required or permitted to give or furnish to the Debtor pursuant thereto, (ii) to inspect the Cars and all records relating thereto, (iii) to exercise its rights to perform for the Lessee under Section 20 of the Lease, (iv) to cause the Lessee to perform such acts as may be requested by the Debtor pursuant to Section 19 of the Lease, and (v) to grant such consents, approvals and waivers as may be required or permitted to be made or given by the Debtor under the Operative Agreements;

(f) so long as no Event of Default has occurred and is continuing, the right, to the exclusion of the Secured Party, (i) to exercise all rights incident to the Lease with respect to the Lessee's renewal or purchase options and the right to determine Fair Market Value in connection with the exercise of those options, (ii) to elect to retain the Cars (but only so long as all Obligations have been first paid in full) and to determine Fair Market Value, when applicable, in connection with Lessee's early termination option under Rider No. 7 to the Lease, and (iii) to make adjustments to the monthly rent and Stipulated Loss Value, but only as provided for in paragraph C of Rider No. 2 to the Lease and subject to the terms of paragraph D of such Rider; and

(g) whether or not an Event of Default has occurred and is continuing, all rights of the Debtor, to the exclusion of the Secured Party, to compromise or waive any right, remedy or

benefit pursuant to subparagraphs (a) and (b) hereof or to modify, amend or waive any provision pertaining thereto; and

(h) whether or not an Event of Default has occurred and is continuing, all rights of the Debtor to assign any or all of its rights, obligations, title or interest under the Lease in accordance with Section 21(b) of the Lease; provided, however, that (i) the assignee agrees to be bound by all of the terms of the Lease, this Agreement, the Note Purchase Agreement, the Note(s) and the Assignment, (ii) such assignee executes prior to any such assignment such agreements as Secured Party may reasonably require to evidence such assumption and continue the perfection of Secured Party's liens and security interest in Collateral, and (iii) such assignee has a net worth at least equal to that of the Debtor at the time of the assignment.

## Article II

### Debtor's Covenants, Representations and Warranties

The Debtor covenants, represents and warrants that:

1. The Cars are leased to Lessee pursuant to the Lease. Except for (i) the security interests granted hereby, and (ii) Lessee's rights under the Lease, Debtor is the sole owner of the Collateral, which is free and will remain free of any lien, security interest or encumbrance created by or through the Debtor, and Debtor will defend the Collateral against all such claims and demands, which Secured Party deems to be adverse to its interests, of any person at any time claiming the same or any interest therein.

2. The Cars constitute goods which are mobile and which are of a type normally used in more than one jurisdiction and the Debtor has its chief executive office in Maryland. The Debtor shall not change the location of its chief executive office without notifying the Secured Party in advance. The Debtor will take no action to permit the Cars to be maintained other than in accordance with the terms of the Lease, and the Debtor will not take any action to permit the Cars to be wasted, misused, abused or to deteriorate, or be used in violation of any law, ordinance or regulation of any governmental authority insofar as it adversely affects the value of the Cars or the security interests granted hereunder.

3. All taxes and assessments upon the Collateral or its operation or use shall be paid by Lessee or out of the Collateral.

4. At its option, and without any obligation to do so, Secured Party may discharge or pay any taxes, liens, security interests, or other encumbrances at any time levied or placed on or against the Collateral or Debtor in breach of this Agreement, and may pay for insurance on the Collateral and may pay for its maintenance and preservation. Debtor agrees to reimburse Secured Party on demand for any such payment made, or expense incurred, pursuant to the foregoing authorization.

5. The Collateral will not (except as provided in this Security Agreement) be sold, transferred, substantially modified (except to the extent permitted in or required by the Lease), pledged, assigned, hypothecated, further encumbered or disposed of by the Debtor, without the prior written consent of the Secured Party.

6. Debtor shall execute from time to time, alone or with Secured Party, any Security Agreements, UCC Financing Statements, UCC Continuation Statements or other documents and do such other acts considered by Secured Party to be reasonably necessary or desirable to perfect or protect the security interests hereby created. All cost and expenses (including without limitation reasonable fees and expenses of counsel and filing fees) related to the preparation and filing of any Security Agreements, UCC Financing Statements, UCC Continuation Statements or other documents related to the perfection or protection of the security interests hereby created shall be paid if not by the Lessee under the Lease then out of the Collateral. If Debtor shall fail to execute such documents following a request to do so, Debtor hereby authorizes Secured Party as Debtor's agent and attorney in fact to execute and file in any appropriate office Security Agreements, UCC Financing Statements, UCC Continuation Statements and similar instruments signed by Secured Party alone. A carbon, photographic or other reproduction of a financing statement or this or any other security agreement shall be sufficient as a financing statement.

7. The Debtor has delivered to Secured Party the original Lease and the Guaranty assigned hereunder. All other copies of the Lease and the Guaranty in existence are marked on their faces and signature pages to indicate their status as non-original copies only.

### Article III Events of Default

Debtor shall be in default under this Security Agreement upon the happening of any default or Event of Default as set forth in the Note Purchase Agreement.



Article IV  
Secured Party's Remedies

Subject to the limitation provided in Article V hereof, the following shall apply:

Upon an Event of Default hereunder and so long as it is continuing, Secured Party shall have the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State of Wisconsin and all other applicable laws. Without limiting the generality of the foregoing, Secured Party may, upon default, exercise the following rights and remedies:

1. Secured Party may peaceably by its own means or with judicial assistance enter the premises where any Collateral is located and take possession of the Collateral, or render it unusable, or dispose of the Collateral on such premises, and Debtor will not resist or interfere with such action.

2. Secured Party may require Debtor to assemble all or any part of the Collateral and make it available to Secured Party at any place within the continental limits of the United States designated in a notice sent to Debtor and consistent with the return provisions of the Lease.

3. Debtor hereby agrees that a notice sent to it at least ten (10) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition.

4. If any Default (as defined in the Lease) has occurred and is continuing, as assignee of Debtor's interest in the Lease, exercise any or all of the rights and powers and pursue any or all of the remedies provided for in the Lease (excepting only Excluded Rights and Excluded Payments).

5. Secured Party may incur attorneys' fees and expenses in exercising any of its rights and remedies upon default, which fees and expenses shall become part of Secured Party's expenses of retaking, holding, preparing for sale and the like. Debtor will reimburse Secured Party on demand for all such expenses.

6. Debtor agrees that if any warranty or representation contained herein should prove to be untrue or incorrect in any material respect when made, notwithstanding any other provisions contained herein or in any other agreement between the Debtor and Secured Party, the Secured Party may at its option terminate this Agreement and accelerate the loan made in connection with this

Agreement, and Debtor shall pay to Secured Party the principal amount due on the Note(s) together with accrued interest, plus costs and expenses incurred by the Secured Party arising out of enforcement of this provision.

Article V  
Standstill

Notwithstanding any provision hereof to the contrary, the Secured Party agrees that

1. If it shall proceed to exercise any of the remedies set forth herein, it shall, to the extent that it is entitled to do so hereunder and under the Lease (pursuant to the collateral assignment by Debtor under the Assignment), prior thereto or concurrently proceed to exercise any and all of the similar remedies set forth in the Lease; provided, that the requirement to exercise such Lease remedies shall not apply in circumstances where such exercise has been involuntarily stayed or prohibited by applicable law or court order for a continuous period in excess of one hundred twenty (120) days (the "Standstill Period").

2. Any Default arising pursuant to Section 18(a)(4) of the Lease (a "Bankruptcy Default") shall not result in an Event of Default hereunder so long as (i) from and after the 121st day after the imposition of any stay, or similar prohibition of actions pursuant to such Bankruptcy Default (a "Stay") all existing Events of Defaults are cured and no other Events of Default shall occur and remain uncured, in each such case, by either Debtor or Lessee, or (ii) the Secured Party otherwise agrees to an extension of the Standstill Period.

3. To the extent Debtor exercises its rights to cure any Defaults or events which, with the giving of notice of passing of time or both, constitutes a Default after a Bankruptcy Default, the exercise of such rights will not limit the cure rights otherwise available to Debtor under the Note Purchase Agreement.

4. If the Secured Party shall nevertheless acquire any of the Collateral pursuant to its exercise of remedies under Article IV hereunder while the Stay is still in effect and consummates a resale of such Collateral within the six months of such acquisition, the net proceeds from such resale or other disposition in excess (when aggregated with all other amounts previously or concurrently being applied) of the Obligations will be paid to Debtor.

Article VI  
Miscellaneous

1. The remedies contained herein are in addition to those granted by Debtor to Secured Party in the Note Purchase Agreement as to the Collateral which is the subject of this Agreement. No delay or omission of the Secured Party to exercise any remedy shall exhaust or impair any remedy of the Secured Party, nor shall any waiver by the Secured Party extend to or be taken to affect any subsequent default. No remedy hereunder is intended to be exclusive of any other remedy, but shall be cumulative to any and every other remedy to which the Secured Party is entitled. The Secured Party shall not be required first to look to, enforce or exhaust any other security, collateral or guarantees.

2. This Security Agreement shall be deemed delivered in the State of Wisconsin and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

3. Any notice or notification required to be given or may be given by mailing such notice, postage prepaid, or sent by facsimile transmission, to Debtor's address as it appears at the beginning of this Security Agreement.

4. All the terms, conditions and covenants of this Security Agreement shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

5. This Security Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

6. Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument.

7. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease.

Article VII  
Non-Recourse

Notwithstanding any provision of the Loan Documents to the contrary, the Obligations shall be satisfied solely out of the Collateral (as defined in the Loan Documents). Without limiting

the generality of the foregoing, the Debtor shall have no liability to make any payments under this Agreement, the Note(s), or any of the other Loan Documents whatsoever except from the Collateral. In addition, the Debtor:

(a) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease or the Guaranty referred to and defined in the Note Purchase Agreement (or any of the other document, instruments or agreements entered into in connection with the Lease or the Guaranty; collectively, together with the Lease and the Guaranty, the "Operative Documents") by or against any party thereto (other than the Debtor), or of any of the parties' (other than the Debtor's) respective obligations thereunder, and

(b) shall not be responsible for the performance or observance by any party (other than the Debtor) of any of their respective agreements, representations, indemnities, obligations or other undertakings under the Lease, the Guaranty or other Operative Documents, it being understood that as to all such matters Secured Party will look solely to its rights under this Assignment, the Note Purchase Agreement and the Security Agreement against the Collateral and to Secured Party's rights under the Lease, the Guaranty and the other Operative Documents against the parties thereto (other than the Debtor) and the Collateral.

The foregoing sentence of this paragraph shall not apply to a judgment based upon a finding of fraud or material misrepresentation on the part of Debtor.

IN WITNESS WHEREOF, the parties have caused this Security Agreement to be duly executed as of the date first above written.

DEBTOR:

SECURED PARTY:

THE FIRST NATIONAL  
BANK OF MARYLAND

AID ASSOCIATION FOR LUTHERANS

By George Wood (SEAL)

By \_\_\_\_\_ (SEAL)

Name GEORGE WOOD

Name \_\_\_\_\_

Title SENIOR VICE PRESIDENT

Title \_\_\_\_\_

the generality of the foregoing, the Debtor shall have no liability to make any payments under this Agreement, the Note(s), or any of the other Loan Documents whatsoever except from the Collateral. In addition, the Debtor:

(a) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease or the Guaranty referred to and defined in the Note Purchase Agreement (or any of the other document, instruments or agreements entered into in connection with the Lease or the Guaranty; collectively, together with the Lease and the Guaranty, the "Operative Documents") by or against any party thereto (other than the Debtor), or of any of the parties' (other than the Debtor's) respective obligations thereunder, and

(b) shall not be responsible for the performance or observance by any party (other than the Debtor) of any of their respective agreements, representations, indemnities, obligations or other undertakings under the Lease, the Guaranty or other Operative Documents, it being understood that as to all such matters Secured Party will look solely to its rights under this Assignment, the Note Purchase Agreement and the Security Agreement against the Collateral and to Secured Party's rights under the Lease, the Guaranty and the other Operative Documents against the parties thereto (other than the Debtor) and the Collateral.

The foregoing sentence of this paragraph shall not apply to a judgment based upon a finding of fraud or material misrepresentation on the part of Debtor.

IN WITNESS WHEREOF, the parties have caused this Security Agreement to be duly executed as of the date first above written.

DEBTOR:

SECURED PARTY:

THE FIRST NATIONAL  
BANK OF MARYLAND

AID ASSOCIATION FOR LUTHERANS

By \_\_\_\_\_ (SEAL)

By  (SEAL)

Name \_\_\_\_\_

Name JAMES ABITZ  
VICE PRESIDENT - SECURITIES

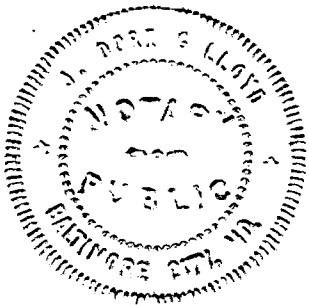
Title \_\_\_\_\_

Title \_\_\_\_\_

City  
COUNTY OF Baltimore )  
STATE OF Maryland ) ss.

On September 29, 1993, before me, the undersigned, a Notary Public, in and for said State, personally appeared George W. Wood, known to me to be the Senior Vice President of THE FIRST NATIONAL BANK OF MARYLAND, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the national banking association therein named, and acknowledged to me that such banking association executed the within instrument pursuant to its bylaws or a resolution of its board of directors, for the purposes and consideration therein expressed.

WITNESS my hand and official seal.



J. Doring Lloyd  
Notary Public, Baltimore County City  
State of Maryland  
My commission: J. DORING LLOYD  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires August 11, 1994

COUNTY OF OUTAGAMIE )  
STATE OF WISCONSIN ) ss.

On \_\_\_\_\_, 1993, before me, the undersigned, a Notary Public, in and for said State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of AID ASSOCIATION FOR LUTHERANS, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the fraternal benefit organization therein named, and acknowledged to me that such fraternal benefit organization executed the within instrument pursuant to its bylaws or a resolution of its board of directors, for the purposes and consideration therein expressed.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County  
State of \_\_\_\_\_  
My commission: \_\_\_\_\_

COUNTY OF \_\_\_\_\_ )  
STATE OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_, 1993, before me, the undersigned, a Notary Public, in and for said State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of THE FIRST NATIONAL BANK OF MARYLAND, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the national banking association therein named, and acknowledged to me that such banking association executed the within instrument pursuant to its bylaws or a resolution of its board of directors, for the purposes and consideration therein expressed.

WITNESS my hand and official seal.

Notary Public, \_\_\_\_\_ County  
State of \_\_\_\_\_  
My commission: \_\_\_\_\_

COUNTY OF OUTAGAMIE )  
STATE OF WISCONSIN ) ss.

On September 29, 1993, before me, the undersigned, a Notary Public, in and for said State, personally appeared James A. Bitts, known to me to be the Vice President - Secretary of AID ASSOCIATION FOR LUTHERANS, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the fraternal benefit organization therein named, and acknowledged to me that such fraternal benefit organization executed the within instrument pursuant to its bylaws or a resolution of its board of directors, for the purposes and consideration therein expressed.

WITNESS my hand and official seal.

Ruth M. Mueller  
Notary Public, Outagamie County  
State of Wisconsin  
My commission, expires: 7-27-97



EXHIBIT A

EQUIPMENT:

One hundred thirty-seven (137) newly manufactured 4,000 cu. ft., 118-ton capacity, 286,000 lb. gross rail load, roller bearing, five pocket, rapid discharge, rotary coupled aluminum open top coal hopper cars bearing GRTX reporting marks and identified by road nos. 13001 through 13130, inclusive, and WCSX reporting marks and identified by road nos. 12124 through 12130, inclusive.



# THE FIRST NATIONAL BANK OF MARYLAND

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## MEMORANDUM OF RAILCAR LEASE AGREEMENT

dated as of September 30, 1993

between

THE FIRST NATIONAL BANK OF MARYLAND,

as Lessor

and

WHEELABRATOR COAL SERVICES COMPANY,

as Lessee

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FILED WITH THE INTERSTATE COMMERCE COMMISSION  
PURSUANT TO 49 U.S.C. § 11303  
ON SEPTEMBER 30, 1993 AT \_\_\_\_ A.M.  
RECORDATION NUMBER \_\_\_\_.

## MEMORANDUM OF RAILCAR LEASE AGREEMENT

THIS MEMORANDUM OF RAILCAR LEASE AGREEMENT is entered into as of this 30th day of September, 1993, by and between THE FIRST NATIONAL BANK OF MARYLAND, a national banking association ("Lessor"), and WHEELABRATOR COAL SERVICES COMPANY, a Delaware corporation ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, 137 newly manufactured 4,000 cubic foot, 118-ton capacity, 286,000 lb. gross rail load, roller bearing, five pocket, rapid discharge, rotary coupled aluminium open top coal hopper cars bearing GRTX reporting marks and identified by road nos. 13001 through 13130, inclusive, and WCSX reporting marks and identified by road nos. 12124 through 12130, inclusive, all as more particularly described in that certain Railcar Lease Agreement dated as of September 30, 1993 and Schedule No. 1 executed pursuant thereto (the "Lease"), between Lessor and Lessee.
2. The Lease shall be effective as of the execution date thereof and shall be subject to the Term of the Lease, as defined therein.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Railcar Lease Agreement to be executed as of the date first above written.

THE FIRST NATIONAL BANK OF MARYLAND  
Lessor

By: \_\_\_\_\_  
George Wood  
Senior Vice President

WHEELABRATOR COAL SERVICES COMPANY  
Lessee

By: \_\_\_\_\_

STATE OF MARYLAND)
) SS:
CITY OF BALTIMORE )

On this \_\_\_ day of September, 1993, before me personally appeared, George Wood, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of THE FIRST NATIONAL BANK OF MARYLAND, a national banking association, that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on September \_\_\_, 1993, on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[Notarial Seal]
Notary Public
My Commission Expires:\_\_\_\_\_.

STATE OF TEXAS )
) SS:
COUNTY OF LAMB )

On this \_\_ day of September, 1993 before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he or she (as the case may be) is the \_\_\_\_\_, of WHEELABRATOR COAL SERVICES COMPANY, a Delaware corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on September \_\_\_, 1993 on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public
[Notarial Seal]
My Commission Expires:\_\_\_\_\_.

# THE FIRST NATIONAL BANK OF MARYLAND

## RAILCAR LEASE GUARANTY

This RAILCAR LEASE GUARANTY (the "Guaranty") is executed and delivered in favor of THE FIRST NATIONAL BANK OF MARYLAND, its successors and assigns ("Lessor"), in connection with that certain Railcar Lease Agreement dated as of September 30, 1993, together with all Schedules executed or to be executed pursuant thereto (the "Lease"), by and between Lessor and WHEELABRATOR COAL SERVICES COMPANY, its successors and assigns ("Lessee").

The undersigned ("Guarantor") operates two coal fired power plants in the State of Texas. Crucial to its operation is its ability to receive and handle coal delivered to said plants. Guarantor has contracted with Tuco, Inc., who in turn has contracted with Lessee to provide this service. Without this service, Guarantor would be severely hampered in its operations. As a result, Guarantor derives a substantial benefit from having Lessee provide this service. To service Guarantor's needs, Lessee has agreed to lease from Lessor 137 open top coal hopper cars recently manufactured by Trinity Industries, Inc.

In order to induce Lessor to enter into the Lease (execution and delivery hereof being a condition precedent to Lessor's obligations under the Lease) with the Lessee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned ("Guarantor") hereby UNCONDITIONALLY GUARANTEES (a) to pay Lessor in lawful money of the United States all rents and other sums reserved in the Lease, or any substitutions therefor, in the amounts, at the times and in the manner set forth in the Lease; and (b) to perform, at the time and in the manner set forth in the Lease, all of the terms, covenants and conditions therein required to be kept, observed or performed by Lessee, (collectively, the "Obligations").

1. This Guaranty is a continuing one and shall terminate only upon full payment of all rents and all other sums (including, without limitation, all Stipulated Loss Value payments, Termination Value payments and the Make-Whole Premium, if any) due under the Lease and the performance of all of the terms, covenants and conditions therein required to be kept, observed or performed by Lessee, including such payment and performance under all schedules made a part of said Lease, whether to be performed before or after the last rent payment has been made under the Lease.

2. Guarantor authorizes Lessor, with Lessee's consent where required, without notice or demand, and without affecting its liability hereunder, from time to time to: (a) change the amount, time or manner of payment of rent or other sums reserved in the Lease; (b) change any of the terms, covenants, conditions or provisions of the Lease; (c) amend, modify, change or supplement the Lease; (d) consent to Lessee's assignment of the Lease or to the sublease of all, or any portion, of the equipment covered by the Lease; (e) receive and hold security for the payment of this Guaranty or the performance of the Lease, and exchange, enforce, waive and release any such security; and (f) apply such security and direct the order or manner of sale thereof as Lessor in its discretion may determine.

3. Guarantor waives any right to require Lessor to: (a) proceed against Lessee; (b) proceed against or exhaust any security held from Lessee; (c) pursue any other remedy in Lessor's power whatsoever; or (d) except as otherwise expressly provided in this Section 3, notify Guarantor of any default by Lessee in the payment of any rent or other sums reserved in the Lease or in the performance of any term, covenant or condition therein required to be kept, observed or performed by Lessee. Guarantor further waives any defense arising by reason of any disability or other defense of Lessee, any lack of authority of Lessee with respect to the Lease, the invalidity, illegality or lack of enforceability of the Lease from any cause whatsoever, the failure of Lessor to acquire title to the equipment subject to the Lease or to perfect or maintain perfection of any interest therein or the cessation from any cause whatsoever of the liability of Lessee; provided, however, that Guarantor does not waive any defense arising from the due performance by Lessee of the terms and conditions of the Lease. Upon demand, Guarantor agrees to pay and perform the Obligations regardless of any existing or future offset or claim which may be asserted by Guarantor. In the event of a Default, Lessor (and to the extent Lessor has assigned its rights to receive payment of any sums due thereunder to Aid Association for Lutherans ("Lender"), then Lender) shall give Guarantor written notice thereof and no later than the 5th day following its receipt of such notice, Guarantor shall cure such Default, or cause such Default to be cured and, if it so elects, assume or cause a substitute lessee to assume, all of Lessee's rights and obligations under the Lease (then existing and thereafter arising); provided, however, that any such assumption must be effectuated on the date of such cure by documentation (including all filings, certificates and opinions) acceptable to Lessor (and, if applicable, Lender), in its sole discretion, pursuant to which, all such obligations shall become the legal, valid and binding obligations of Guarantor or the substitute lessee (as the case may be), enforceable against Guarantor or such substitute lessee (as the case may be), in accordance with the terms of the Lease; provided, further, that at the time of such election if Guarantor causes a substitute lessee to assume the Lease, Guarantor shall unconditionally continue to guaranty the Obligations, and otherwise comply with all of the provisions hereof, as they relate to the Lease as is assumed. For the purposes hereof, a "substitute lessee" shall mean a domestic user of open top coal hopper cars whose creditworthiness is satisfactory to Lessor (and, if applicable, Lender), and satisfying all of the other suitability standards then imposed by Lessor's (and, if applicable, Lender's) credit committee(s), all in Lessor's (and, if applicable, Lender's) sole and absolute discretion. This Guaranty and Guarantor's payment obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of the Obligations is rescinded or must otherwise be restored or returned by Lessor, all as though such payment had not been made. Lessor's good faith determination as to whether a payment must be restored or returned shall be binding on Guarantor. Payment of all amounts now or hereafter owed to the Guarantor by Lessee or any other obligor for any of the Obligations is hereby

subordinated in right of payment to the indefeasible payment in full to Lessor of all Obligations and is hereby assigned to Lessor as security therefor. Guarantor irrevocably and unconditionally waives and relinquishes all statutory, contractual, common law, equitable and all other claims against Lessee or any other obligor for any of the Obligations, any collateral therefor, or any other assets of Lessee or any other obligor for subrogation, reimbursement, exoneration, contribution, indemnification, setoff or other recourse in respect of sums paid or payable to Lessor by Guarantor hereunder, and Guarantor hereby further irrevocably and unconditionally waives and relinquishes any and all other benefits which it might otherwise directly or indirectly receive or be entitled to by reason of any amounts paid by, or collected or due from, Guarantor, Lessee or any other obligor for any of the Obligations, or realized from any of their respective assets. Guarantor waives all presentments, demands for performance, protests, notices of dishonor, and notices of acceptance of this Guaranty.

4. Guarantor represents and warrants to Lessor that: (a) (1) Guarantor is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation. (2) The execution, delivery and performance hereof: (x) have been duly authorized by all necessary corporate action on the part of Guarantor; (y) do not require the approval of any stockholders, trustee or holder of any obligations of Guarantor except such as have been duly obtained; and (z) do not and will not contravene any law, governmental rule, regulation or order now binding on Guarantor, or the charter or by-laws of Guarantor, or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Guarantor under, any indenture, mortgage, contract or other agreement to which Guarantor is a party or by which it or its property is bound. (3) The financial statements of Guarantor (copies of which have been furnished to Lessor) have been prepared in accordance with generally accepted accounting principles consistently applied ("GAAP"), and fairly present Guarantor's financial condition and the results of its operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no material adverse change in such conditions or operations. (b) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein. (c) There are no pending actions or proceedings to which Guarantor is a party, and there are no other pending or threatened actions or proceedings of which Guarantor has knowledge, before any court, arbitrator or administrative agency, which, either individually or in the aggregate, would materially adversely affect the financial condition of Guarantor, or the ability of Guarantor to perform its obligations hereunder. Further, Guarantor is not in default under any material obligation for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent under any lease agreement which, either individually or in the aggregate, would have the same such effect.

5. Guarantor covenants and agrees that: (a) it will provide to Lessor: (1) within one hundred twenty (120) days after the end of each fiscal year of Guarantor, the balance sheet and related statement of income and statement of changes in financial position of Guarantor, prepared in accordance with GAAP, all in reasonable detail and certified by independent certified public accountants of recognized standing selected by Guarantor; (2) within sixty (60) days after the end of each quarter of Guarantor's fiscal year, the balance sheet and related statement of income and statement of changes in financial position of Guarantor for such quarter, prepared in accordance with GAAP; and (3) within thirty (30) days after the date on which they are filed, all regular periodic reports, forms and other filings required to be made by Guarantor to the Securities and Exchange Commission, if any; and (b) it will promptly execute and deliver to Lessor such further documents, instruments and assurances and take such further action as Lessor from time to time may reasonably request in order to carry out the intent and purpose of this Guaranty and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder.

6. Guarantor shall be deemed to be in default hereunder ("Default") if: (a) Guarantor shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of thirty (30) days after the earlier of the actual knowledge of Guarantor or written notice thereof to Guarantor by Lessor; or (b) Guarantor shall (1) be generally not paying its debts as they become due, (2) take action for the purpose of invoking the protection of any bankruptcy or insolvency law, or any such law is invoked against or with respect to Guarantor or its property, and such petition filed against Guarantor is not dismissed within sixty (60) days; or (c) there is an anticipatory repudiation of Guarantor's obligations pursuant to this Guaranty; or (d) any certificate, statement, representation, warranty or audit contained herein or heretofore or hereafter furnished with respect to this Guaranty by or on behalf of Guarantor proving to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or having omitted any substantial contingent or unliquidated liability or claim against Guarantor; or (e) Guarantor shall be in default under any obligation for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent, and the applicable grace period with respect thereto shall have expired; or (f) the corporate existence of Guarantor is terminated and its obligations in connection with this Guaranty are not assumed by a successor in interest reasonably satisfactory to Lessor; or (g) (in the event the voting capital stock of Guarantor is then privately owned) effective control of Guarantor's voting capital stock, issued and outstanding from time to time, is not retained by the present stockholders (unless Guarantor shall have provided sixty (60) days' prior written notice to Lessor of the proposed disposition of stock and Lessor shall have consented thereto in writing); (h) (in the event the voting capital stock of Guarantor is then publicly held) as a result of or in connection with a material change in the ownership of Guarantor's capital stock, Guarantor's debt to worth ratio equals or exceeds twice Guarantor's debt to worth ratio as of the date of this Guaranty, without the prior written consent of Lessor. As used herein, "debt to worth ratio" shall mean the ratio of (1) Guarantor's total liabilities which, in accordance with GAAP, would be included in the liability side of a balance sheet, to (2) Guarantor's tangible net worth including the sum of the par or stated value of all outstanding capital stock, surplus and undivided profits, less any amounts attributable to good will, patents, copyrights, mailing lists, catalogs, trademarks, bond discount and underwriting expenses, organization expenses and other intangibles, all as determined in accordance with GAAP.

Upon a Default hereunder, Lessor may, at its option, declare this Guaranty to be in default by written notice to Guarantor (without election of remedies), and at any time thereafter, may do any one or more of the following, all of which are hereby authorized by Guarantor:

- A. declare the Lease to be in default and thereafter sue for and recover all liquidated damages, accelerated rentals and/or other sums otherwise recoverable from Lessee thereunder; and/or
- B. sue for and recover all damages then or thereafter incurred by Lessor as a result of such Default; and/or
- C. seek specific performance of Guarantor's obligations hereunder.

In addition, Guarantor shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of any Default or the exercise of Lessor's remedies hereunder and/or under the Lease. No right or remedy referred to in this Section is intended to be exclusive, but each shall be cumulative, and shall be in addition to any other remedy referred to above or otherwise available at law or in equity, and may be exercised concurrently or separately from time to time.

The failure of Lessor to exercise the rights granted hereunder upon any Default by Guarantor shall not constitute a waiver of any such right upon the continuation or reoccurrence of any such Default.

The obligations of the undersigned hereunder are independent of the obligations of Lessee. A separate action or actions may be brought and prosecuted against Guarantor whether an action is brought against Lessee or whether Lessee be joined in any such action or actions.

7. GUARANTOR AGREES THAT THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF LESSOR AND GUARANTOR HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF MARYLAND (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE). Guarantor agrees that any action or proceeding arising out of or relating to this Guaranty may be commenced in any state or Federal court in the State of Maryland, and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at its address hereinbelow set forth, or as it may provide in writing from time to time, or as otherwise provided under the laws of the State of Maryland.

This Guaranty shall inure to the benefit of Lessor, its successors and assigns, and shall be binding upon the successors and assigns of Guarantor.

IN WITNESS WHEREOF, Guarantor has caused this instrument to be duly executed, under seal, as of the 30th day of September, 1993.

ATTEST:

SOUTHWESTERN PUBLIC SERVICE COMPANY

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

600 S. Tyler  
Suite 2502  
Amarillo, Texas 79101